

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANDREA THOMAS,

Case No.: 2:17-cv-02001-MMD-CWH

Plaintiff.

vs.

SMITH-PALLUCK ASSOCIATES CORP.,
d/b/a LAS VEGAS ATHLETIC CLUBS.

Defendants.

ORDER RE:

**STIPULATION AND ORDER TO
EXTEND TIME FOR PLAINTIFF TO
RESPOND TO MOTION TO DISMISS**

[SECOND REQUEST]

Plaintiff Andrea Thomas (“Plaintiff”), by and through her counsel of record, and Defendant Smith-Palluck Associates Corp., d/b/a Las Vegas Athletic Clubs (“LVAC”) have agreed and stipulated to the following:

1. On July 24, 2017, Plaintiffs filed a Complaint [ECF No. 1].

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1 2. On September 14, 2017, LVAC filed an Answer to the Complaint [ECF No.5].

2 3. On February 7, 2018, Plaintiff filed a Motion to Amend the Complaint [ECF No.

3 17] and briefing was completed on February 28, 2018 [ECF No. 23].

4 4. On July 17, 2018 LVAC filed a Motion to Stay Case [ECF No. 38].

5 5. On September 6, 2018, the Court granted LVAC's Motion to Stay Case and denied

6 Plaintiff's Motion to Amend Complaint [ECF No. 42].

7 6. On April 2, 2019, Plaintiff filed a Motion for Leave to file First Amended

8 Complaint [ECF No. 51].

9 7. On April 12, 2019, the Court denied Plaintiff's Motion to file First Amended

10 Complaint as moot [ECF No. 54].

11 8. On April 13, 2019, Plaintiff filed a Notice Re-Urging her Motion for Leave to File

12 First Amended Complaint [ECF No. 55].

13 9. On May 14, 2019, the Court granted Plaintiff's Notice Re-Urging her Motion for

14 Leave to File First Amended Complaint [ECF No. 61].

15 10. On May 15, 2019, Plaintiff filed a First Amended Complaint [ECF No. 62].

16 11. On May 29, 2019, LVAC filed a Motion to Dismiss Plaintiff's First Amended

17 Complaint, which seeks dismissal on the ground that the Telephone Consumer Protection Act

18 ("TCPA") imposes an unconstitutional restriction on First Amendment speech [ECF No. 64].

19 12. On June 11, 2019, the Parties entered into a stipulation to extend Plaintiff's

20 response deadline from June 12, 2019 to June 19, 2019, as Plaintiff's counsel requested additional

21 time to respond to the Motion to Dismiss due to a conflict stemming from a Ninth Circuit Court

22 of Appeals' hearing in Alaska [ECF No. 69].

1 13. On June 11, 2019, the Court granted the Parties stipulation to extend Plaintiff's
2 response deadline to June 19, 2019 [ECF No. 70].

3 14. Plaintiff's Response is due June 19, 2019.

4 15. On June 13, 2019, the Ninth Circuit Court of Appeals issued its decision in *Duguid*
5 *v. Facebook, Inc.*, --- F.3d ----, 2019 WL 2454853 (9th Cir. June 13, 2019), in which the Ninth
6 Circuit Court of Appeals found that a 2015 amendment to the TCPA was unconstitutional, but the
7 provision was severable from the remainder of the TCPA. *See id.* at *5-8.

8 16. Plaintiff believes that because the *Duguid* panel's decision found that the non-
9 severed provisions of the TCPA were constitutional, and LVAC's conduct falls entirely within
10 those statutory provisions whose constitutionality was upheld, that LVAC should withdraw its
11 motion.

12 17. On June 14, 2019, Plaintiff reached out to LVAC's counsel, requesting that LVAC
13 withdraw its pending motion to dismiss in light of the conclusive and binding interpretation of the
14 *Duguid* panel. LVAC is presently considering Plaintiff's request.

15 18. Consequently, Plaintiff and LVAC have agreed to extend Plaintiff's response seven
16 days in order to allow the parties to consider the impact of the *Duguid* case and determine whether
17 the issue should be briefed, or whether LVAC will withdraw its pending motion. If agreed to,
18 withdrawal of the motion will minimize the expense of litigation and prevent burdening the Court
19 with consideration of the motion. As a result, both Plaintiff and LVAC hereby request this Court
20 to further extend the date for Plaintiff to respond to LVAC's Motion to Dismiss Amended
21 Complaint until **June 26, 2019**. This stipulation is made in good faith, is not interposed for delay,
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1 and is not filed for an improper purpose.

2 IT IS SO STIPULATED.

3 Dated June 18, 2019.

<p>4 KNEPPER & CLARK LLC</p> <p>5 <i>/s/ Miles N. Clark</i></p> <p>6 Matthew I. Knepper, Esq. Nevada Bar No. 12796</p> <p>7 Miles N. Clark, Esq. Nevada Bar No. 13848</p> <p>8 5510 So. Fort Apache Rd, Suite 30 Las Vegas, NV 89148</p> <p>9 Email: matthew.knepper@knepperclark.com Email: miles.clark@knepperclark.com</p> <p>10 HAINES & KRIEGER LLC</p> <p>11 David H. Krieger, Esq. Nevada Bar No. 9086</p> <p>12 8985 S. Eastern Avenue, Suite 350 Henderson, NV 89123</p> <p>13 Email: dkrieger@hainesandkrieger.com</p> <p>14 <i>Counsel for Plaintiff</i></p>	<p>4 BALLARD SPAHR LLP</p> <p>5 <i>/s/ Stacy H. Rubin</i></p> <p>6 Joel E. Tasca, Esq. Nevada Bar No. 14124</p> <p>7 Lindsay C. Demaree, Esq. Nevada Bar No. 11949</p> <p>8 Stacy H. Rubin, Esq. Nevada Bar No. 9298</p> <p>9 1980 Festival Plaza Drive, Suite 900 Las Vegas, NV 89135</p> <p>10 Email: tasca@ballardspahr.com Email: demareel@ballardspahr.com Email: rubins@ballardspahr.com</p> <p>11 <i>Counsel for Defendant</i> <i>Smith-Paluck Associates Corp., d/b/a Las</i> <i>Vegas Athletic Clubs</i></p>
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16 **ORDER GRANTING,**
17 **STIPULATION TO EXTEND TIME FOR PLAINTIFF TO RESPOND TO,**
18 **MOTION TO DISMISS.**

19 **IT IS SO ORDERED.**



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21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
23 Dated: 6/19/2019